

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8538 / February 9, 2005

SECURITIES EXCHANGE ACT OF 1934
Release No. 51167 / February 9, 2005

INVESTMENT ADVISERS ACT OF 1940
Release No. 2355 / February 9, 2005

INVESTMENT COMPANY ACT OF 1940
Release No. 26756 / February 9, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11818

In the Matter of

Banc of America Capital
Management, LLC,
BACAP Distributors, LLC,
and Banc of America
Securities, LLC,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTIONS
203(e) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF
1940

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940

(“Investment Company Act”), against Banc of America Capital Management, LLC, BACAP Distributors, LLC, and Banc of America Securities, LLC (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the “Offers”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

A. Summary

1. From as early as July 2000 and continuing through July 2003, Banc of America Capital Management, LLC (“BACAP”) and its predecessor entity Banc of America Advisers, LLC, the investment adviser to all mutual funds, or series, in the Nations Funds mutual fund complex (the “Nations Funds”) as well as BACAP Distributors, LLC (“BACAP Distributors”), the distributor and administrator for Nations Funds, allowed certain market timing clients to engage in short-term or excessive trading and never disclosed this fact to other investors.

2. During this period, BACAP and BACAP Distributors entered into arrangements with two entities, allowing them to engage in frequent short-term trading in at least 13 Nations Funds mutual funds, including international funds. BACAP and BACAP Distributors knew and approved of the short-term trading arrangements, and allowed the arrangements to continue despite knowing that such trading could be detrimental to Nations Funds’ shareholders. These arrangements increased the advisory fees earned by BACAP and the distribution fees earned by BACAP Distributors. Moreover, in connection with one of these arrangements, BACAP received “sticky

¹ The findings herein are made pursuant to Respondents’ Offers and are not binding on any other person or entity in this or any other proceeding.

assets” – long-term investments that were to remain in place in return for allowing the client to market time the funds.

3. Throughout the relevant period, BACAP and BACAP Distributors did not disclose to Nations Funds’ shareholders the special arrangements made with these short-term traders and the potential harm these arrangements posed to the relevant Nations Funds. BACAP and BACAP Distributors also did not disclose the resulting conflicts of interest these arrangements created between BACAP, BACAP Distributors, and Nations Funds’ shareholders. These non-disclosures constituted material omissions of fact. The trades made pursuant to these relationships were also contrary to representations to various clearing broker dealers made by BACAP that Nations Funds would not allow more than eight exchanges per fund account per year because of the harmful effect of short-term trading on Nations Funds.

4. Moreover, in accordance with exceptions approved by the Board of Trustees of Nations Funds, one of these clients was exempted from a redemption fee on short-term trades in certain Nations Funds international equity mutual funds. BACAP and BACAP Distributors did not disclose the existence of this approved timing relationship, or the fact that this client was being exempted from the redemption fee, in prospectuses and proxy statements issued to shareholders and potential shareholders.

5. BACAP had a fiduciary duty to act at all times in the best interests of the Nations Funds and their shareholders. As a result, BACAP had an affirmative obligation to act in the utmost good faith and to provide full and fair disclosure of all material facts, including conflicts of interest, to Nations Funds’ shareholders. It further had an affirmative obligation to act with reasonable care to avoid misleading prospective investors in the Nations Funds.

6. By placing its own interests in generating fees for itself and affiliated entities above those of Nations Funds’ shareholders, and by failing to disclose these arrangements and resulting conflicts of interest, BACAP breached its fiduciary duty to shareholders in the funds where the short-term or excessive trading took place.

7. At the same time, Banc of America Securities, LLC (“BAS”) facilitated market timing and late trading by some introducing broker dealers and a hedge fund at the expense of shareholders of Nations Funds and other mutual fund families.

8. These entities effected their late trading through BAS’s “Special Mutual Fund Order Entry System.” Once granted access to BAS’s Special Mutual Fund Order Entry System, these introducing broker dealers and a hedge fund could and did enter mutual fund trade orders as late as 7:00 p.m. ET. BAS either knew or recklessly disregarded that at least some of these entities were engaged in late trading through this system.

9. BAS also provided its introducing broker dealer clients with account management tools and other assistance that enabled the introducing broker dealers to

conceal the market timing activities of their clients from unsuspecting mutual funds. BAS facilitated the submission of hundreds of market timing trades by these broker dealers after the mutual funds in question had acted to block these entities from further trading.

B. Respondents

10. Respondent BACAP, a subsidiary of Bank of America, N.A. which, in turn, is a subsidiary of Bank of America Corporation (“Bank of America”), is registered as an investment adviser under the Advisers Act. From January 1, 2003 to present, BACAP managed and advised the Nations Funds. BACAP has ultimate responsibility for overseeing the day-to-day management of the Nations Funds. BACAP is the successor to Banc of America Advisors, LLC, a registered investment adviser under the Advisers Act that managed and advised the Nations Funds prior to January 1, 2003. BACAP is located at Bank of America Plaza, Charlotte, North Carolina.

11. Respondent BACAP Distributors, a subsidiary of Bank of America, N.A. and an affiliate of Nations Funds, is a registered investment adviser under the Advisers Act as well as a registered broker dealer under the Exchange Act. From January 1, 2003 to present, BACAP Distributors acted as the distributor and administrator of the Nations Funds. Prior to January 1, 2003, Banc of America Advisors, LLC and Stephens Inc. served as co-administrators and co-distributors of Nations Funds. BACAP Distributors is located at Bank of America Plaza, Charlotte, North Carolina. As of March 31, 2004, BACAP advised more than \$200.8 billion, including more than \$128.6 billion under management in the Nations Funds family of funds.

12. Respondent BAS, a subsidiary of Bank of America, is a full-service investment bank and brokerage firm with principal offices in San Francisco, California, New York, New York, and Charlotte, North Carolina. BAS is a registered investment adviser under the Advisers Act as well as a registered broker dealer under the Exchange Act.

C. Relevant Entities and Individuals

13. Nations Funds Trust, the registrant and issuer of the shares of the Nations Funds, is an open-end investment company under the Investment Company Act. As of March 31, 2004, Nations Funds Trust offered fifty-six different portfolios. Nations Funds Trust is organized under Delaware law.

14. Theodore C. Sihpol, III (“Sihpol”) was a broker in BAS’s high net worth group in Manhattan, New York. Sihpol resides in New Canaan, Connecticut.

15. Canary Capital Partners, LLC, is a New Jersey limited liability company with offices at 400 Plaza Drive, Secaucus, New Jersey.

16. Canary Investment Management, LLC, is a New Jersey limited liability company with offices at 400 Plaza Drive, Secaucus, New Jersey.

17. Canary Capital Partners, Ltd., is a Bermuda limited liability company.

18. Edward J. Stern (“Stern”) is a resident of New York, New York and was the managing principal of Canary Capital Partners, LLC, Canary Investment Management, LLC, and Canary Capital Partners, Ltd (collectively, “Canary”).

D. Facts

Market Timing and Late Trading

19. Market timing includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal per se, can harm other mutual fund shareholders because it can dilute the value of their shares. Market timing can also disrupt the management of the mutual fund’s investment portfolio and cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

20. Rule 22c-1(a) under the Investment Company Act requires investment companies issuing redeemable securities, their principal underwriters and dealers, and any person designated in the fund’s prospectus as authorized to consummate transactions in securities issued by the fund to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem. Mutual funds generally determine the daily price of mutual fund shares as of 4:00 p.m. ET. In these circumstances, orders received before 4:00 p.m. must be executed at the price determined as of 4:00 p.m. that day. Orders received after 4:00 p.m. must be executed at the price determined as of 4:00 p.m. the next trading day.

21. Mutual funds are required to disclose in their prospectuses the time as of which the NAV is set for purposes of determining the price at which shareholders may buy or redeem mutual fund shares. For example, the August 1, 2001 prospectus for Nations Funds Primary A Shares states that orders received “before the end of a business day (usually 4:00 p.m. Eastern time, unless the NYSE closes early) will receive that day’s net asset value per share. Orders received after the end of a business day will receive the next business day’s net asset value per share.”

22. Mutual fund prospectuses also disclose whether the mutual fund has designated a principal underwriter, dealer, or any other person as authorized to consummate transactions in shares issued by the fund (who would also be subject to the requirements of Rule 22c-1(a)). For example, the August 1, 2003 prospectus for Nations Funds Primary A Shares disclosed that BACAP Distributors was the exclusive distributor (i.e., principal underwriter) of Nations Funds shares. The selling agreement between BACAP Distributors – the exclusive distributor of Nations Funds’ shares –

and BAS identified BAS as a financial intermediary authorized to offer and sell Nations Funds' shares. Pursuant to the January 1, 2003 distribution agreement, BACAP Distributors warranted to Nations Funds Trust that it would "offer and sell Shares at the applicable public offering price or the net asset value next determined after an order is received."

23. "Late trading" refers to the practice of placing orders to buy or sell mutual fund shares after the time as of which a mutual fund has calculated its NAV (usually as of the close of trading at 4:00 p.m. ET), but receiving the price based on the prior NAV already determined as of 4:00 p.m. Late trading enables the trader to profit from market events that occur after 4:00 p.m. but that are not reflected in that day's price. In particular, the late trader obtains an advantage – at the expense of the other shareholders of the mutual fund – when he learns of market moving information and is able to purchase (or sell) mutual fund shares at prices set *before* the market moving information was released.

24. Permitting late trading violates Rule 22c-1(a) under the Investment Company Act and harms other shareholders when late trading dilutes the value of their shares.

BACAP's Timing Policies

25. At all times during the existence of the approved timing relationships, BACAP had internal policies designed to identify and prevent market timing in Nations Funds. As disclosed in the August 1, 2001 prospectus for Nations Funds Primary A Shares, Nations Funds reserved the right to "limit the number of exchanges that [an investor] can make within a specified period of time." In order to effectuate this policy, BACAP's "timing police" regularly obtained and reviewed transaction reports to identify potential market timing transactions. Once a transaction was identified as a possible "market timing" trade, BACAP's "timing police" would instruct the transfer agent to block the transaction and would alert the clearing broker of the block.

26. In an April 26, 2001 letter to one such clearing broker, BACAP described Nations Funds' market timing policy: "Nations Funds believes that market-timing activity can be detrimental to fund performance and portfolio management, which is not in the best interests of shareholders. As stated in the prospectus, Nations Funds reserves the right to limit the number of share exchanges within a specified time period." The letter defined Nations Funds' "policy with respect to exchange activity" as limiting exchanges to "a maximum of eight, per fund account, per rolling 365-day period (i.e., the 12 months prior to the most recent exchange)," and disclosed that "[e]xchange privileges will be suspended on a particular fund account after there have been eight exchanges in the fund account during a rolling 365-day period."

27. BACAP revised its internal market timing policies in August 2002. In a letter sent to at least fifteen "firms identified as market timers," BACAP informed these entities that "Nations Funds has the following policy with respect to redemptions either

by selling shares or exchanging into another Fund.” The letter continued: “Generally, exchange purchases are limited to a maximum of three per fund account, per rolling 28 day period. Additionally they are limited to a maximum of eight, per fund account, per rolling 365-day period....”

28. In addition to the prospectuses and letters to clearing brokers, BACAP also disclosed its market timing policies in “due diligence” questionnaires provided to potential large investors. For example, in response to a question in an April 2001 due diligence questionnaire regarding Nations Funds’ market timing policies, BACAP responded that Nations Funds “does monitor for ‘hot money’ flows and seeks to exclude short-term investors from investing. Historically, there have been occasional examples of market timing; however, the advisor has taken steps to identify these accounts and has refused to accept investments from these shareholders.”

BACAP’s Approved Timing Relationships

The TranSierra Capital Relationship

29. In July 2000, a financial adviser affiliated with TranSierra Capital, LLC (“TranSierra”), contacted a Nations Fund sales representative via e-mail about commencing a new timing relationship with Nations Funds. The adviser requested permission for her clients to “make at least 12 and not more than 20 ‘round trips’” between Nations Municipal Income Fund and a money market fund. The adviser also expressed interest in timing Nations California Tax Free Fund and Nations California Municipal Bond Fund under the same parameters.

30. As the adviser informed the sales representative, two years earlier TranSierra had received “approval from Nations to place up to \$4 million in the Nations Municipal Income A (NMUIX)” and to engage in twelve to twenty “round trips” between that fund and a Nations Fund money market fund. Due to underutilization of that timing capacity, and a desire to time additional funds, the adviser sought the portfolio manager’s renewed approval for additional market timing trades.

31. The portfolio manager approved TranSierra’s timing request. Neither the portfolio manager nor any BACAP employee conducted any analysis to determine whether shareholders of these funds would be harmed by TranSierra’s transactions.

32. In October 2000, and again in June 2001, BACAP’s “timing police” identified and issued stop orders for market timing transactions by TranSierra. When the “timing police” learned about the portfolio manager’s approval, BACAP lifted the stop orders.

33. The TranSierra relationship continued until the portfolio manager who approved the relationship left BACAP in mid-2003. When the new portfolio manager complained to BACAP’s “timing police” in June 2003 that these transactions interfered

with fund management and harmed performance, BACAP terminated the relationship. By that time, however, TranSierra had executed 524 transactions in three Nations Funds (Nations Municipal Income Fund, Nations Intermediate Municipal Bond Fund and Nations California Municipal Bond Fund), reaping almost \$2 million in profits.

The Canary Relationship

34. BAS initiated the relationship with Canary through a “cold call” by Sihpol, a broker in BAS’s high net worth group. Sihpol followed up on this initial telephone contact through a personal meeting with Stern in early April 2001.

35. During this meeting, Stern outlined Canary’s approach to timing mutual funds and results it had achieved doing so. Stern asked if Canary would be allowed to time Nations Funds, and proposed that Bank of America, N.A. lend Canary the money to do so and that BAS provide clearing services for the trades. Sihpol agreed to seek approval from his superiors.

36. Later that month, Sihpol invited Stern to attend a meeting at BAS’s New York offices to explain further the proposal. During this meeting, Stern and two of Canary’s traders explained their strategy to a group of BAS officers, including Sihpol. Stern and the traders discussed their credit needs and presented a list of Nations Funds they would most like to time.

37. To obtain approval for Canary’s proposed timing transactions, Sihpol called the co-President of BACAP. Sihpol explained Canary’s request to BACAP’s co-President, including that Canary would be willing to commit “permanent” assets in certain Nations Funds in exchange for permission to time other, more volatile, funds. Sihpol opined that establishing a relationship with Stern could result in BAS wresting management responsibilities for the Stern family fortune from a competitor.

38. Following the call with Sihpol, BACAP’s co-President discussed the proposal with BACAP’s Chief Administrative Officer (“CAO”). BACAP’s CAO stated that he did not like the proposal because permitting Canary to time Nations Funds, while actively precluding other market timers, would send conflicting messages to the BACAP sales force. However, BACAP’s co-President explained that granting Canary timing capacity would strengthen BACAP’s relationship with BAS’s high net worth group and lead to increased investments in Nations Funds by these clients.

39. BACAP’s co-President contacted the portfolio managers for three of the four Nations Funds Canary wished to time. In each of these conversations – which lasted only a few minutes – BACAP’s co-President explained that Canary intended to time up to 1% of the fund’s assets under management, and that Canary would average one “round trip” between the timed fund and a money market fund per week. Although the portfolio managers acceded to the request, no one performed any analysis to determine what, if any, harm would result to the funds’ shareholders due to Canary’s transactions.

Canary Memorializes the Relationship

40. On May 1, 2001, Stern sent Sihpol a letter confirming the Nations Funds Canary was going to time and providing the dollar amounts of timing for each fund. As described in the memorandum, Canary would initially time four funds – Nations Convertible Securities Fund, Nations International Equity Fund, Nations Emerging Markets Fund and Nations Small Company Fund – in an aggregate amount of \$16.8 million. The short term trading would average one “round turn” per week. After selling a fund, the proceeds of the sale were to be deposited into a money market or short-term bond fund until Canary decided to “redeploy” it for the next timing trade in the “approved” Nations Funds.

41. The letter further confirmed the understanding reached with respect to order processing and BAS’s intention to provide financing for Canary’s trades. Stern wrote that “We plan on transacting our trades manually at first (via Fax), at a time of day that is a little bit earlier than ... specified in our first meeting. As soon as we can work out our lending arrangement with the bank and begin transacting electronically via [the Special Mutual Fund Order Entry System], we will draw down leverage against the capital we have deployed in the Nations funds, effectively increasing our trading capital with your firm to \$32 million. If all goes well, this capital should grow larger as we get a sense of what trades can and cannot be done via the Banc of America Securities Platform. We really would like to get going with [the Special Mutual Fund Order Entry System] and begin trading electronically as soon as possible.”

42. Stern also confirmed that in return for allowing such timing activity Canary would commit “permanent” capital to Nations Funds in an amount equal to the capital used to “time” other Nations Funds.

43. Sihpol forwarded Canary’s letter to BACAP’s co-President. Sihpol also advised BACAP’s co-President of the Canary entities which would be used to time trades and that a Canary affiliate would be “making the dollar for dollar investment in the two short-term government funds.”

44. BACAP’s co-President forwarded the Canary letter and Sihpol’s e-mail to various senior managers within BACAP as well as certain portfolio managers. As BACAP’s co-President noted in his accompanying e-mail message, “I’ve spoken to a number of you about this day trading exception. The account is the Stern family, a significant and growing GCIB/Bank relationship. Also, nice incentive of matching funds in the Short-Intmtd. Gov’t Fund.... thanks, and let me know if there are any issues.” BACAP’s co-President also requested that BACAP’s CAO notify one of the three sub-advisers for the international funds that a BAS client had been approved to time funds managed by these advisers.

Canary’s Requests For Additional Market Timing Capacity

45. Shortly after securing approval to time certain Nations Funds, Canary, through Sihpol, began to ask for more timing capacity. Between May 2001 and January 2003, Canary made eight requests for either access to new funds or increases in agreed-upon limitations.

46. Canary's numerous requests exacerbated the difficulties caused by BACAP's failure to monitor Canary's adherence to agreed-upon limitations. For example, in response to an August 2001 request by Sihpol for additional timing capacity in Nations International Equity Fund, BACAP's co-President responded that "there should not be any timing in International Equity – they can't handle it." When Sihpol reminded BACAP's co-President that Nations International Equity Fund was "one of the original funds that [the Canary entities] were approved to trade from the out start (sic)," BACAP's co-President denied the request for additional capacity. Despite BACAP's co-President's statement that Nations International Equity Fund "can't handle" market timing transactions, Canary continued to time Nations International Equity Fund.

47. BACAP's failure to establish procedures to monitor Canary's compliance with agreed-upon limitations also permitted Canary routinely to exceed these limitations. Moreover, even when BACAP identified situations where Canary violated these limitations, BACAP did not terminate the Canary relationship.

48. For example, in December 2002, a portfolio manager informed BACAP's "timing police" that Canary's transactions interfered with portfolio management. In the course of investigating this complaint, the "timing police" learned that Canary had exceeded transaction and trade frequency limitations for at least two Nations Funds. Having been caught by the "timing police," Canary agreed to conform its trading patterns for these funds. However, Sihpol subsequently highlighted this "important" concession to BACAP's co-President as additional "leverage for the new [timing] space" previously discussed between Stern, Sihpol and BACAP's co-President.

49. BACAP's failure to monitor Canary's transactions also prevented BACAP from minimizing harm caused by these transactions. On March 12, 2003, Canary invested approximately \$1.6 million in Nations Managed Index Fund. The following morning, a member of the portfolio management group for the fund alerted BACAP's "timing police" in an internal e-mail that BACAP's failure to provide advance notification of such significant transactions harmed long-term shareholders: "We get notified of mutual fund inflows the morning AFTER the client has bought or sold into the fund. If the cash flows are a small percentage of a fund's assets, the timing mis-match does not meaningfully impact performance. However, if the cash flow is a meaningful percentage of the fund, the timing mis-match can turn out to have enormous implications. Example: This morning in the managed index fund, NMIMX, we had an inflow of 5% of the funds assets (which is great!). The client is going to get into the fund at yesterday's price. We were notified about the flow this morning. The market opened up 2%, which is where we bought futures to hedge the flow. The net

result is that the fund is now approximately 10bp [basis points] behind the index. This has huge negative implications.”

50. BACAP attempted to address this issue by arranging through discussions with Stern in late March 2003 for Canary to provide notification of “likely” index fund transactions. However, Canary did not always provide the requested notification. And even when Canary provided e-mail notification of “likely” transactions, this notification did not enable the portfolio managers to prevent shareholder dilution.

51. For example, on May 12, 2003, the portfolio manager for Nations MidCap Index Fund informed the “timing police” in an internal e-mail that “the PB [Private Bank] has a client [Canary] who trades \$9 million in and out of the midcap index fund all the time. It wasn’t so bad when he held his positions for a while, but now he’s trading extremely short swings, sometimes with holding periods of only a day. The impact of this has been lessened since we have been getting notification in time to hedge at the close, but there is still a cost that’s being borne by other fund shareholders.”

52. The following day, Canary redeemed its May 12, 2003 purchase. However, the portfolio manager did not receive notification about the Canary trade until after the close and therefore could not hedge against this transaction. The portfolio manager informed senior BACAP executives in an e-mail about the untimely notification and requested that these executives prevent further transactions by Canary in the fund.

53. Two days later, Canary made another purchase in the Nations MidCap Index Fund, a position Canary redeemed a day later. As the portfolio manager complained in an e-mail titled “Surely this has to be the final trade,” “The \$9m that came into midcap yesterday is going out today. That’s two round trips this week. The next time he comes in, we absolutely have to be able to DK [reject] the trade. Enough is enough.” BACAP halted Canary’s timing activity in this fund several days later.

54. Between May 2001 and July 2003, Canary had as much as \$70 million in approved timing space in ten Nations Funds mutual funds: Nations International Equity Fund, Nations Small Company Fund, Nations Convertible Securities Fund, Nations Strategic Growth Fund, Nations SmallCap Index Fund, Nations MidCap Index Fund, Nations LargeCap Index Fund, Nations Managed Index Fund, Nations Value Fund and Nations Emerging Markets Fund. Canary executed more than \$3 billion of purchases and sales in these funds, and ultimately reaped nearly \$16.7 million of profits through this trading.

Bank of America Affiliates Profited From the Relationship

55. Bank of America affiliates profited from the Canary relationship. BAS received more than \$4.1 million from a 1% “wrap” fee on Canary’s timing assets and

broker fee revenue for Canary-related accounts.

56. BAS also generated revenues from various alternative-trading strategies utilized by Canary. One of these trading strategies involved derivative transactions known as share basket swaps. Between August 2001 and July 2003, Canary entered into 38 share basket swaps with BAS's derivatives desk. In connection with these transactions, Canary agreed to pay BAS the appreciation, and BAS agreed to pay Canary the depreciation, on a basket of equities. To hedge its market exposure, the BAS derivatives desk would short-sell the basket of equities.

57. Canary chose the stocks in each share basket to replicate the portfolio of a corresponding mutual fund it was timing. Canary used the share basket swaps to hedge its exposure to the risk associated with securities in its mutual fund portfolios that it perceived to be poor performers, as well as to reduce the volatility of its long mutual fund positions. The swap transactions also enabled Canary effectively to "short" its mutual fund positions and thus benefit from market timing transactions when Canary believed that the price of a particular mutual fund would decline.

58. BAS earned more than \$7 million in revenue from executing the derivative transactions that were part of Canary's market timing strategy.

59. Canary, through an affiliate, also received a loan from Bank of America's banking entity, the "Private Bank," a division of Bank of America, N.A.. Canary utilized this financing to trade mutual funds in brokerage accounts maintained at BAS. The mutual funds purchased and held in the BAS accounts cross-collateralized the loan and the share basket swaps that Canary engaged in at BAS. At the inception of the financing, in July 2001, Canary received a \$70 million revolving credit facility. Over time, the Private Bank increased Canary's line of credit to a maximum of \$125 million.

60. A Senior Private Lending Specialist from the Private Bank's Credit Department monitored loan collateralization on a daily basis. This officer analyzed the loan balance and swap exposure by calculating the collateral maintenance through the Private Bank's Trading Credit Risk Information System. To further facilitate this collateral monitoring, the Private Bank received from Canary a document listing Canary's approved timing relationships and the limitations imposed by each fund family.

61. The Private Bank received more than \$1 million in revenue from its lending relationship with Canary.

62. BACAP received \$267,000 in additional advisory fees on Canary's assets invested in Nations Funds.

63. BACAP Distributors received \$113,000 in additional distribution fees on Canary's assets invested in Nations Funds.

BACAP Knew That Market Timing Harmed Long-Term Shareholders

64. Both at the commencement and throughout the approved timing relationships, BACAP knew that market timing could and did harm Nations Funds' shareholders.

65. For example, shortly after approving Canary's April 2001 market timing request, senior BACAP officers consulted with the sub-advisers for Nations Funds' international equity funds about another potential timing relationship. As with Canary, in exchange for permission to time international equity funds, the potential client promised in an e-mail to be a "long term" partner with Nations Funds, invest "sticky assets" in certain Nations Funds, and to "seed" any new funds BACAP intended to offer.

66. Each of the three sub-advisers informed BACAP's management that permitting market timing would harm long-term investors. As one of the sub-advisers explained in an e-mail received by senior BACAP officers, market timing harms the funds and its shareholders in at least three ways:

(a) First, market timing harms fund performance. "Given that market timers are trying to exploit an arbitrage which occurs because of increased global correlations and the closed nature of some of the International markets they tend always for performance purposes to be in the wrong direction. So that when US markets, particularly Nasdaq, are sharply lower Timers are sellers of International thereby either taking cash away in a down market or more usually forcing the manager to sell into weak markets and vice-versa."

(b) Second, market timing has negative tax consequences for long-term investors. "As these are taxed funds the vastly increased turnover may result in a deterioration of the net of tax return."

(c) Third, "[a]nd most importantly Who is paying for the arbitrage? As I understand it it is the other mutual fund holders who are being disadvantaged by the activities of the 'market timers.' Aside from the fact that the vastly increased turnover of the fund is likely to hurt performance as is discussed above, the arbitrage exists because market timers are effectively dealing at 'stale prices' as Asian markets have closed. They are therefore selling stocks at historic prices when they are likely to open lower or buying them when they are likely to open higher, this at the expense of the existing mutual fund holders as the 'gain' made by market timers must be a transfer or 'loss' for the existing holders."

67. Discussions among senior BACAP officers about instituting a redemption fee on certain Nations Funds in February 2002 further demonstrate BACAP's knowledge that market timing harmed Nations Funds' shareholders. When BACAP's CAO complained in February 2002 that BACAP "continue[s] to get killed

by market timing activity in our international portfolios,” BACAP’s co-President responded that an analysis done by one of the funds’ sub-advisers demonstrated that market timers were responsible for the inferior performance of one of Nations Funds’ international equity funds. BACAP’s co-President concluded that the issue of whether a redemption fee was necessary to combat harm caused by market timing (including harm to shareholders in funds being timed by Canary) was so obvious that it was “not something that [BACAP] need[ed] to study too hard.”

68. When BACAP sales personnel objected to imposing a redemption fee on these funds, BACAP’s co-President overrode these objections. As BACAP’s co-President informed the head of BACAP’s Product Development Group, “we need to put a fee on International Equity and Emerging Markets asap. If the group can’t make a decision, then I’ll exercise ‘executive privilege.’ We’ve got a real demonstrated problem on several of our funds which creates a fiduciary responsibility that I can’t let go on unmanaged.”

BACAP Failed To Disclose Canary’s Exemption From the Redemption Fee

69. BACAP’s co-President’s threat to exercise “executive privilege” resulted in immediate consideration of a redemption fee by BACAP’s Product Development Committee. During the Product Development Committee meeting, a senior member of the committee explained that a redemption fee was necessary because attempts by market timers to capture a price arbitrage opportunity “cause[] the portfolio management teams to maintain higher than desirable levels of cash, putting a performance drag on the Funds, which disadvantages the majority of shareholders.” The Product Development Committee recommended that the Nations Funds Board of Trustees (“the Board”) adopt a redemption fee on some Nations Funds with various exemption categories, including an exemption for “contractual agreements between the Distributor and certain dealers who would be allowed to short-term trade without paying the fee.” The “Stern Family accounts” were to be exempted from the fee pursuant to this exception.

70. In a May 21, 2002 letter, BACAP’s co-President informed the Board that “special matters” to be presented at the May 29-30, 2002 Board meeting would include approval for a redemption fee on certain funds. As BACAP’s co-President explained, “As markets have become increasingly volatile, markettimers have become more prevalent. This is particularly true in international equity funds. As a general matter, we believe that market timing is harmful to the majority of our Funds’ shareholders.”

71. At or about the time he sent the letter to the Board, BACAP’s co-President spoke with the head of Bank of America’s Asset Management Group about the upcoming Board meeting. Part of this discussion included a review of draft materials that specifically disclosed that the “Stern Family accounts” would be exempt from the redemption fee. Both gentlemen agreed that, even if customer privacy concerns prevented BACAP from identifying Canary as the exempt client, BACAP’s

co-President should inform the Board that BACAP had an approved timing relationship and that the approved timer would be exempt from the fee.

72. The materials ultimately provided to the Board did not disclose that the “Stern Family accounts” would be exempt from the redemption fee. In the “Executive Summary” section of the presentation materials, BACAP informed the Board that “[s]pecific exceptions will be made for trades unrelated to market timing.” In a subsequent section titled “Exempted Transactions,” the materials noted that one of the proposed exemption categories covered “[s]hares redeemed from accounts for which the dealer, broker or financial institution of record have entered into an agreement with Nations Funds specifically allowing short-term trading activity, including BAI, Bank of America Private Bank, Merrill Lynch and specific accounts (Under these circumstances the negative impact can generally be avoided)” (emphasis original).

73. According to senior BACAP officials, during his presentation to the Board, BACAP’s co-President explained that BACAP had a controlled market timer who was being permitted to market time Nations Funds, including some of the funds affected by the redemption fee proposal, and that this client would not be assessed the redemption fee.

74. The Board did not ask any questions regarding the exemptions to the redemption fee, including the identity of the “specific accounts” referenced in the Board materials. The Board unanimously approved the implementation of the redemption fee as proposed.

75. Thereafter, senior BACAP personnel, internal counsel, and outside counsel drafted an update to the relevant prospectuses. BACAP personnel, internal BACAP counsel and outside counsel discussed whether, and how, to disclose that BACAP’s controlled market timer would be exempt from the fee. An initial draft disclosed that the redemption fee would not apply on shares “redeemed from accounts established to specifically allow short-term trading activity, and other managed agency/asset allocation accounts.” However, the final August 2002 prospectus stated that the redemption fee would not apply to shares “redeemed from accounts where by agreement with Nations Funds short-term trading activity is permitted, including shares sold as part of an automatic rebalancing within an asset allocation program.”

76. In an e-mail labeled “**for internal use,**” a member of the Product Development Committee instructed representatives of BACAP’s sales force and Nations Funds’ transfer agent not to disclose the existence and identity of BACAP’s “controlled market timer” to the investing public. This executive cautioned that any investor query regarding the identity of entities excluded from the redemption fee “should be answered generically with a comment such as, ‘The list is very short and we generally limited it to entities that have not previously engaged in market timing and that we have some level of confidence that the current situation will not change. ...’ If third parties inquire as to what ‘generally’ means in that description, you can cite an

exception that we have made for a client who is *temporarily* unable to handle the operational requirements. It would be inappropriate to discuss additional client names” (emphasis original).

Late Trading by Canary and Others

BAS’s Mutual Fund Order Entry Processes

77. Mutual fund transactions at BAS were effected through two different electronic systems: the Mutual Fund Routing System (“MFRS”) and through a batch file submission mechanism known internally as the “Special Mutual Fund Order Entry System.”

78. MFRS is a single order data entry application that had been provided to BAS by a third-party vendor. There were two methods to input trades into MFRS. The first method involved BAS registered representatives or introducing broker dealers writing out order tickets and forwarding the tickets to BAS’s Mutual Funds Operations Department (“Operations”). A dedicated settlement associate in Operations entered the trade into MFRS for execution. Trades could be entered into MFRS until 5:30 p.m. ET. These transactions were subsequently batched by the system and periodically forwarded to National Securities Clearing Corporation’s (“NSCC”) Fund/SERV mutual fund trading platform via multi-batch processing. Batches were submitted to NSCC by a third party vendor at 9:30 a.m., 11:30 a.m., 5:30 p.m. and 8:30 p.m. ET. Fund/SERV, in turn, communicated the trade to the corresponding mutual fund companies.

79. Introducing broker dealer clients of BAS and certain BAS registered representatives could also enter trades into MFRS without manual assistance. Electronic access was given to BAS registered representatives and correspondents to enter trades remotely from their offices.

80. MFRS assigned and recorded the time the transaction was entered into the system. In certain instances, BAS reviewed MFRS transactions the following day in the Mutual Fund Audit Report, using exception reports generated by MFRS. The reports contained fields for: (1) time of entry into the system; and (2) time of trade execution for trades from June 2003 forward. However, few times of trade execution were ever actually recorded because this data field in the transaction entry record was an optional entry. Moreover, even when the time of order execution was recorded, these records were not retained within BAS’s systems because BAS did not update their database to capture and store this information.

81. BAS’s Special Mutual Fund Order Entry System was an alternative system utilized to enter only mutual fund exchange transactions. Because BAS installed the Special Mutual Fund Order Entry System at the offices of certain introducing broker dealer clients and ultimately Canary, these entities were able to send mutual fund exchanges directly to the third-party vendor for transmission to NSCC and thus bypass BAS’s operations and compliance functions.

Late Trading by Introducing Broker Dealers

82. Beginning in 1999, BAS actively solicited clearing business from introducing broker dealers with significant mutual fund market timing clients. As reflected in an internal e-mail, at the time BAS decided to enter this business segment, BAS was aware that mutual fund families did “not cherish this business,” and that BAS would have to “leverage whatever [it could] with them” and establish a “close working relationship with them in order to expedite corrections, adjustments, late orders, etc.”

83. BAS’s decision to clear transactions for market timers was the subject of significant internal debate. One BAS Manager complained in an e-mail that entering into this business not only threatened BAS’s non-timing clearing business, but that the first market timing client was a particularly bad choice because it “pushes the limits and ignores the principals (sic) of mutual fund investing.” The BAS Manager was informed in an e-mail from a Vice President in BAS’s clearing group that BAS’s entry into the mutual fund timing business was “not something that we are going to back out of at this point” because there were “very senior people” at BAS’s clearing group, the third-party vendor and the client who were “watching the status of this project.”

84. Between June 1999 and August 2003, BAS entered into clearing agreements with at least three registered broker dealers whose clients engaged in mutual fund market timing. BAS’s primary business purpose with respect to those introducing broker dealers was to provide market timing services. To achieve this purpose, BAS: (1) attempted to negotiate agreements with fund families, including Nations Funds, to permit these clients to engage in market timing; (2) provided its Special Mutual Fund Order Entry System to these broker dealers; and (3) permitted these broker dealers to establish multiple account and registered representative numbers which enabled the broker dealers to evade detection of ongoing market timing activity.

85. At least some of the introducing broker dealers who had access to BAS’s Special Mutual Fund Order Entry System utilized this system to engage in late trading.

86. During the period that these entities were entering trades through BAS’s Special Mutual Fund Order Entry System, certain officers and employees in BAS’s clearing group either knew or recklessly disregarded that at least some of these entities were engaged in late trading through this system.

87. In two different “pitch meetings” with market timing hedge funds, senior officers from BAS’s clearing group, who were also involved in providing the Special Mutual Fund Order Entry System to the introducing broker dealers, touted the ability to enter mutual fund orders after 4 p.m. ET through the Special Mutual Fund Order Entry System as an additional benefit of establishing a relationship with BAS.

88. A November 2001 memorandum prepared for senior management in BAS’s clearing group noted “As broker dealer on any account that buys, sells or

exchanges Mutual Funds, we need to ensure that any late order taking is done with the knowledge that the order has in fact been received prior to 4:00 p.m. EST.” The memorandum continued, stating that “Funds give broker dealers additional time due to internal processing and broker errors. Although the broker dealer doing the timing would have to control the monitoring of when these exchanges are received from the money manager, we must routinely review these trade blotters. We should amend each contract by stating we will need to review the time stamping of trade blotters on a formal basis.” Despite its obligations to do so, BAS did not implement any of the suggested controls to detect or prevent late trading by correspondents with the Special Mutual Fund Order Entry System.

89. In an August 24, 2001 e-mail, a senior BAS employee inquired whether it was problematic that clients utilizing the Special Mutual Fund Order Entry System could enter orders up until 7:00 p.m. ET while “[t]he rest of the free world cannot get to MFRS after it shuts down around 4:00, 4:30 ish.”

90. On May 12, 2000, one of the broker dealers submitted a transaction file through the Special Mutual Fund Order Entry System at 6:52 p.m. ET. After becoming aware of the time that this transaction file was submitted, a BAS employee asked an administrator at the third party vendor if they had had “[a]ny luck in finding out why position file was late ... and what can be done to ensure it’s on time. It seems to consistently come in at 6:05 ish.”

91. On November 15, 2001 (while BAS technicians responsible for installing the Special Mutual Fund Order Entry System were on site at this introducing broker dealer), one of the broker dealer’s traders sent mutual fund trade tickets to be processed by Operations. These tickets were not sent until after BAS’s internal order entry system (MFRS) had been automatically shut down (5:30 p.m. ET) and none of the tickets had time-stamps. Rather than questioning the propriety of providing the system to this entity, a BAS Vice President sent an e-mail to senior employees in BAS’s clearing group asking “when [BAS’s clearing group] will be giving your new client access to [the Special Mutual Fund Order Entry System]” so that Operations would not be further inconvenienced by such late orders.

92. In May 2003, an employee in BAS’s clearing group asked for and received a report listing transmission times for orders entered by one of the broker dealers through the Special Mutual Fund Order Entry System in May 2003. The report showed that the broker dealer consistently submitted its order files between 5:50 p.m. and 6:47 p.m. ET.

Late Trading By Canary

93. Prior to Spring 2001, BAS only provided the Special Mutual Fund Order Entry System to registered broker dealers. In Spring 2001, BAS took the unusual step of providing the system to a hedge fund – Canary.

94. As discussed above, Canary emphasized the importance of BAS providing clearing brokerage services for Canary's market timing transactions at the outset of the relationship. During the mid-April 2001 meeting at BAS's offices, senior officers from BAS's clearing function participated in discussions about clearing Canary's mutual fund trades. One BAS officer offered to provide Canary with direct access to BAS's Special Mutual Fund Order Entry System. He explained that using this technology would enable Canary directly to transmit its trades to the third-party vendor and thus obviate the need to call the trades into a BAS registered representative. He also stated that an additional benefit of this system would be Canary's ability to enter its trades until 7:00 p.m. ET.

95. Following the mid-April 2001 meeting, Sihpol sought authorization from BAS's compliance function to permit Canary access to BAS's electronic trading system. As a first step to obtain this authorization, Sihpol sent an April 12, 2001 memorandum to his direct superior and a BAS compliance officer. In the April 12, 2001 memorandum, Sihpol noted that Canary had "\$800MM dedicated to traditional Hedge Funds and a proprietary strategy involving market timing through daily mutual fund trading" with an "Immediate Objective" to "implement their proprietary market-timing trading strategy, through the use of our mutual fund clearing operations." Sihpol explained that, while "initially they will have daily contact with both sides' operational staff ... [u]ltimately, all transactions, confirmations, and clearing will take place over a direct link to our main-frame with Clearing's software." Sihpol further wrote that "the Stern family and, more specifically Eddie Stern and Canary Capital, fully appreciate the potential of establishing a relationship with MPCs and the BanK (sic). While the requests they are making may seem a bit unorthodox, they have made it clear they are not only willing to play by the guidelines we agree on, but also pay us for the value we can add." This memorandum was subsequently forwarded to another member of BAS's compliance group as well as BAS's chief compliance officer.

96. A BAS compliance officer sought additional information from Sihpol. In an e-mail sent to Sihpol and his supervisor the same day as Sihpol's memorandum, the compliance officer noted that while Sihpol had indicated that Canary "would have at some point 'direct access' to 'clearing software,'" the compliance officer understood that "customers are not currently given access to this system." He inquired as to whether "this proposed access [had] been discussed with IT, operations, and corporate management," and "who in senior management ha[d] approved this arrangement." Sihpol assured him that senior management within BAS's clearing group had been made aware of the intent to provide Canary with direct access to BAS's clearing system and that senior management "felt the business was worthwhile and an appropriate use of our resources."

97. BAS made no effort to determine what, if any, safeguards had been established to ensure that Canary placed its mutual fund orders through BAS in compliance with applicable securities laws and regulations.

Canary's "Manual" Late Trading

98. At first, Canary conducted its late trading with BAS "manually." Prior to 4:00 p.m. ET, a Canary trader would send Sihpol or a member of his team a series of "proposed" mutual fund trades. Upon receipt, Sihpol, or a member of his team acting upon his instructions, would usually fill out an order ticket, time stamp it, and set it to one side until that evening.

99. Sometime after 4:00 p.m. ET, a Canary trader would telephone Sihpol or a member of his team to either confirm or cancel the "proposed" order. If confirmed, the order (with its pre-close time stamp) would be sent by fax to Operations for processing, and would receive that day's NAV. If Canary cancelled the "order," Sihpol or a member of his team would destroy the ticket.

100. Canary knew that Sihpol and his team were pre-stamping order tickets. In a May 15, 2002 e-mail to Sihpol and a member of his team, a Canary trader asked them to "[d]o me a favor and prestamp a few tickets just in case I fall asleep at 4 PM today." The Canary trader apparently had to be woken up after the close of the market, because a member of Sihpol's team inquired at 4:25 p.m. ET whether the Canary trader wanted BAS to "place any trades" for that day.

101. During the course of the Canary relationship, Sihpol and members of his team streamlined the "manual" order taking process. Sihpol and members of his team began waiting until after the receipt of "final" orders by Canary to time-stamp trade tickets. Despite the fact that at least 21 trade tickets submitted by Sihpol or a member of his team contained time stamps after 4:00 p.m. ET, Operations processed these transactions.

102. Sihpol and members of his team also sent directly to Operations e-mails containing Canary's "proposed" trades that had been confirmed well after 4 p.m. ET. For example, at 3:18 p.m. on August 21, 2002, Canary sent an e-mail containing "POSSIBLE TRADES FOR 8/21/02" to Sihpol and members of his team. A member of Sihpol's team forwarded this e-mail and attachment to Operations at 5:03 p.m. with the instruction to "please execute all trades. Tix coming soon."

103. The practices of Sihpol and his team contravened guidelines and instructions provided by Operations. A February 2002 memorandum from Operations to, among others, brokers and trading assistants in Sihpol's group stated: "All mutual fund tickets need to be faxed to [Operations]. ... The ticket must have a time stamp prior to market close to be processed that day."

104. Operations did not enforce that policy when it came to Canary's transactions. As a senior member of Operations informed her supervisor after the commencement of this investigation, "We initially had many problems with Canary sending out late trades after the market close. [Senior members of Operations] were very accommodating when it came to late orders."

Canary's Electronic Late Trading

105. Between June and October 2001, BAS technicians installed the Special Mutual Fund Order Entry System in Canary's New Jersey offices and trained Canary's personnel in the use of this system. By October 11, 2001, the system was fully operational. BAS technicians subsequently facilitated Canary's use of the Special Mutual Fund Order Entry System by installing a second direct access system in the Manhattan residence of a Canary trader.

106. From October 2001 until July 2003, the Special Mutual Fund Order Entry System was the preferred route for Canary's late trading. Canary executed approximately 8,300 fund exchanges through the Special Mutual Fund Order Entry System. In each case, after inputting the trades directly into the system, Canary would print out a document listing the executed trades and the time that each trade had been executed. Canary then faxed that document to Sihpol or a member of his team.

107. The following morning, Sihpol or a member of his team would use this document to reconcile Canary's trades. Once the trades were reconciled, the document was destroyed.

108. The Special Mutual Fund Order Entry System not only facilitated Canary's late trading in the Nations Funds, it also enabled Canary to trade late in the many other mutual fund families with which BAS had selling agreements. Regardless of whether Canary traded Nations Funds shares or shares of an unaffiliated mutual fund, however, Sihpol and BAS profited. BAS collected a "wrap fee" of one percent of the Canary assets in Nations Funds and one half of one percent of the assets in other funds traded through the electronic link.

BAS's Processes Helped The Introducing Brokers Avoid Detection By Fund Families

109. From at least June 1999 until September 2003, BAS received numerous letters from mutual fund companies notifying it that its introducing broker dealers' ability to engage in market timing transactions in all or some of the company's mutual funds had been blocked. Despite having received these letters, BAS facilitated the ongoing market timing activity of its introducing broker dealer clients by allowing the introducing broker dealers to establish multiple account numbers and registered representative numbers. The multiple account and registered representative numbers allowed the introducing broker dealer to conceal the market timing activity of its clients from unsuspecting mutual fund families and to persist in this activity after the mutual funds had acted to block these clients from further trading.

110. BAS took these actions despite having acknowledged in selling agreements with the fund families that BAS was "responsible for ensuring that that Fund shares [were] offered and sold in compliance with all terms and conditions" of the

relevant prospectus, and despite being reminded by at least one fund family that BAS was “responsible for a ‘best effort’ to comply with stated policies of a fund.”

111. For example, between March 2001 and April 2003 BAS received more than 600 letters from fund families about mutual fund orders placed by one of the introducing broker dealers. In each of these letters, the fund family informed BAS that trades by this introducing broker dealer had been identified as market timing transactions in contravention of the applicable prospectus. BAS forwarded all “stop letters” onto the introducing broker dealer.

112. In each instance, the introducing broker dealer responded to the “stop letter” by establishing a “clone” account through which the introducing broker dealer continued to trade.

113. For example, on March 14, 2001, a mutual fund company notified BAS that it would no longer accept trades from certain BAS accounts belonging to the introducing broker dealer because of market timing activity. That day, the introducing broker opened a new account to avoid the trading restrictions. The introducing broker dealer used this new BAS account number to consummate additional trades in this fund company’s mutual funds on behalf of its clients until this account was identified as a market timing account on April 18, 2001. Again, the introducing broker dealer opened yet another BAS account.

114. Between March 2001 and April 2003, BAS received more than 90 letters from this fund company blocking 98 BAS accounts that had been established for this one introducing broker dealer.

115. BAS further facilitated the introducing broker dealer’s market timing transactions by assisting the introducing broker in establishing and assigning different registered representative numbers to the BAS accounts. The introducing broker created and used at least fifteen different registered representative numbers for the two registered representatives of the introducing broker dealer.

E. Violations

116. As a result of the conduct described in Section III above, BACAP willfully violated Sections 206(1) and 206(2) of the Advisers Act in that, while acting as an investment adviser, it employed devices, schemes, or artifices to defraud clients or prospective clients, and engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. Specifically, BACAP entered into arrangements with an investor and a broker that created a conflict of interest BACAP knowingly or recklessly failed to disclose to the mutual funds’ shareholders.

117. As a result of the conduct described in Section III above, BACAP, an affiliated person of Nations Funds, willfully violated Section 17(d) of the Investment

Company Act and Rule 17d-1 thereunder, in that, while acting as a principal, it participated in and effected transactions in connection with joint arrangements in which Nations Funds mutual funds were participants without filing an application and without a Commission order approving the transactions.

118. As a result of the conduct described in Section III above, BACAP willfully violated Section 20(a) of the Investment Company Act and Rule 20a-1 thereunder, in that it solicited a proxy in respect of a security of which a registered investment company was the issuer by engaging in conduct prohibited by Rule 14a-9 under the Exchange Act. Specifically, BACAP, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, made, in connection with a proxy solicitation by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, statements which, at the time and in the light of the circumstances under which they were made, were false and misleading with respect to material facts, or which omitted to state material facts necessary in order to make statements therein not false and misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which became false or misleading.

119. As a result of the conduct described in Section III above, BACAP willfully violated Section 34(b) of the Investment Company Act in that it made untrue statements of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or omitted to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

120. As a result of the conduct described in Section III above, BACAP Distributors, an affiliated person of Nations Funds, willfully violated Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, in that it, while acting as a principal, participated in and effected transactions in connection with joint arrangements in which Nations Funds were participants without filing an application and without a Commission order approving the transactions.

121. As a result of the conduct described in Section III above, BACAP Distributors willfully violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer and sale of securities.

122. As a result of the conduct described in Section III above, BACAP Distributors willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

123. As a result of the conduct described in Section III above, BACAP Distributors willfully violated Section 15(c) of the Exchange Act and Rule 15c1-2

thereunder, which prohibit effecting transactions in, or inducing or attempting to induce, the purchase or sale of securities (other than on a national securities exchange of which it was a member) by means of a manipulative, deceptive, or other fraudulent device or contrivance.

124. As a result of the conduct described in Section III above, BACAP Distributors willfully aided and abetted and caused BACAP's violations of Sections 206(1) and 206(2) of the Advisers Act. Specifically, BACAP Distributors willfully aided and abetted and caused BACAP to continue an arrangement with a certain investor whereby that investor was allowed to time mutual funds managed by BACAP in exchange for fees on sticky assets in BACAP mutual funds and financial benefits received by BACAP Distributors and other affiliated entities. BACAP Distributors also willfully aided and abetted and caused BACAP to continue an arrangement with a certain broker whereby that broker was allowed to time mutual funds managed by BACAP in exchange for financial benefits received by BACAP Distributors and other affiliated entities. BACAP Distributors knew or was reckless in not knowing that its actions would aid and abet or contribute to BACAP's violations by rendering the fund prospectuses issued by BACAP materially misleading, and would cause BACAP to breach its fiduciary duty to act in the interest of fund shareholders.

125. As a result of the conduct described in Section III above, BACAP Distributors willfully aided and abetted and caused BACAP's violations of Section 34(b) of the Investment Company Act. Specifically, BACAP Distributors willfully aided and abetted and caused BACAP to make untrue statements of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

126. As a result of the conduct described in Section III above, BAS willfully violated, and willfully aided and abetted and caused violations of, Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer and sale of securities.

127. As a result of the conduct described in Section III above, BAS willfully violated, and willfully aided and abetted and caused violations of, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

128. As a result of the conduct described in Section III above, BAS willfully violated Section 15(c) of the Exchange Act and Rule 15c1-2 thereunder, which prohibit effecting transactions in, or inducing or attempting to induce, the purchase or sale of securities (other than on a national securities exchange of which it was a member) by means of a manipulative, deceptive, or other fraudulent device or contrivance.

129. As a result of the conduct described in Section III above, BAS willfully violated Rule 22c-1(a), as adopted under Section 22(c) of the Investment Company Act,

which requires certain mutual funds, persons designated in such issuers' prospectuses as authorized to consummate transactions in any such security, their principal underwriters, or dealers in the funds' securities, to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem.

130. As a result of the conduct described in Section III above, BAS willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder, which require registered brokers and dealers to make and keep current, and preserve, books and records relating to their business as such. Specifically, by preparing inaccurate records through the pre-stamping of order tickets and by destroying certain cancelled "order" tickets and other communications, BAS willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

131. As a result of the conduct described in Section III above, BAS willfully aided and abetted and caused BACAP's violations of Sections 206(1) and 206(2) of the Advisers Act. Specifically, BAS willfully aided and abetted and caused BACAP to enter into an arrangement with a certain investor whereby that investor was allowed to time mutual funds managed by BACAP in exchange for fees on sticky assets in BACAP mutual funds and financial benefits received by BAS and other affiliated entities. BAS knew or was reckless in not knowing that its actions would aid and abet or contribute to BACAP's violations by rendering the fund prospectuses issued by BACAP materially misleading.

132. As a result of the conduct described in Section III above, BAS willfully aided and abetted and caused BACAP's violations of Section 34(b) of the Investment Company Act. Specifically, BAS willfully aided and abetted and caused BACAP to make untrue statements of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

F. Undertakings

133. In determining to accept the Offer, the Commission considered the cooperation afforded the Commission's staff by Respondents during its investigation. This cooperation included conducting a thorough and independent internal investigation, sharing the results of that investigation with the Commission's staff, obtaining the resignations of certain supervisory personnel and others, and implementing certain remedial actions.

134. In determining to accept the Offer, the Commission further considered the following efforts voluntarily undertaken by the Nations Funds:

(a) Prior to May 1, 2005, each of the Nations Funds mutual funds will hold a meeting of shareholders at which all persons expected to serve on the Board of Nations Funds Trust, Nations Master Investment Trust and Nations Separate Accounts Trust as of May 1, 2005 will stand for election.

(b) The seven trustees of Nations Funds with the longest tenure as trustees of Nations Funds or its predecessor entities as of the date of this Order, having either (i) attained by May 1, 2005 the current mandatory retirement age of 72, or (ii) determined not to seek reelection to the Boards of Trustees of Nations Funds Trust, Nations Master Investment Trust and Nations Separate Accounts Trust, shall not stand for election to the Boards of Trustees of Nations Funds Trust, Nations Master Investment Trust and Nations Separate Accounts Trust at the shareholder meeting referred to in subparagraph(a) above.

(c) Effective within 90 days of the date of this Order, no more than 25 percent of the members of the Board of Trustees of any Nations Funds mutual fund will be persons who either (a) were directors, officers or employees of BACAP or BACAP Distributors at any point during the preceding 10 years or (b) are an interested person, as defined in the Investment Company Act, of the Nations Funds mutual funds, BACAP or BACAP Distributors. In the event that the Board of Trustees fails to meet this requirement at any time due to the death, resignation, retirement or removal of any independent trustee, the independent trustees will take such steps as may be necessary to bring the board in compliance within a reasonable period of time.

(d) Effective within 90 days of the date of this Order, no chairman of the Board of Trustees of any Nations Funds mutual fund will either (a) have been a director, officer or employee of BACAP or BACAP Distributors at any point during the preceding 10 years or (b) be an interested person, as defined in the Investment Company Act, of Nations Funds, BACAP or BACAP Distributors.

(e) Effective within 90 days of the date of this Order, any person who acts as counsel to the independent trustees of any Nations Funds mutual fund will be an “independent legal counsel” as defined by Rule 0-1 under the Investment Company Act and will not have any employment, consultant, attorney-client, auditing or other professional relationship with BACAP, BACAP Distributors or any successor entity.

(f) No action will be taken by the Board of Trustees of any Nations Funds mutual fund or by any committee thereof unless such action is approved by a majority of the members of the Board of Trustees or of such committee, as the case may be, who are neither (i) persons who were directors, officers or employees of BACAP or BACAP Distributors at any point during the preceding 10 years nor (ii) interested persons, as defined in the Investment Company Act, of the Nations Funds mutual funds, BACAP or BACAP Distributors. In the event that any action proposed to be taken by and approved by a vote of a majority of the independent trustees of a fund is not approved by the full Board of Trustees, the fund will disclose such proposal and the

related board vote in its shareholder report for such period

(g) Commencing in 2005 and not less than every fifth calendar year thereafter, each of the Nations Funds mutual funds will hold a meeting of shareholders at which the Board of Trustees will be elected.

(h) Each of the Nations Funds mutual funds will designate an independent compliance officer reporting to its Board of Trustees as being responsible for assisting the Board of Trustees and any of its committees in monitoring compliance by BACAP and BACAP Distributors with the federal securities laws, BACAP's fiduciary duties to fund shareholders, and their Code of Ethics in all matters relevant to the operation of the Nations Funds. The duties of this person will include reviewing all compliance reports furnished to the Board of Trustees or its committees by BACAP and/or BACAP Distributors, attending meetings of BACAP's Internal Compliance Controls Committee and BACAP Distributors' Internal Compliance Controls Committee to be established pursuant to BACAP's and BACAP Distributors' undertakings set forth in Section IV below, serving as liaison between the Board of Trustees and its committees and the Chief Compliance Officer of BACAP and BACAP Distributors, making such recommendations to the Board of Trustees regarding BACAP's and BACAP Distributors' compliance procedures as may appear advisable from time to time, and promptly reporting to the Board of Trustees any material breach of fiduciary duty, breach of the Code of Ethics and/or violation of the federal securities laws of which he or she becomes aware in the course of carrying out his or her duties.

(i) Effective within 90 days of the date of this Order, Nations Funds mutual funds will operate in accordance with the following governance policies and practices:

(1) The Governance Committee of the Board of Trustees of Nations Funds ("the Board") shall be responsible for, among other things, making recommendations to the Board on issues related to the composition and operation of the Board.

(2) The Governance Committee shall be composed entirely of Trustees who are not interested persons, as defined in the Investment Company Act, of Nations Funds, BACAP or BACAP Distributors.

135. In determining to accept the Offer, the Commission further considered the following effort voluntarily undertaken by Respondent BAS:

(a) BAS will exit the unaffiliated introducing broker dealer mutual fund clearing business by December 31, 2004. In the event that BAS seeks to conduct any introducing broker dealer mutual fund clearing business relating to unaffiliated broker dealers, or to become directly or indirectly affiliated with any such clearing business, BAS undertakes to retain an independent consultant not unacceptable to the Commission staff to review the policies and procedures of the clearing business to ensure

compliance with the federal securities laws. The provisions of this Order shall not be binding on any unaffiliated purchaser of BAS's introducing broker dealer clearing business.

136. Ongoing Cooperation. In determining to accept the Offer, the Commission has considered the following undertaking by Respondents:

Respondents shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondents have undertaken:

- a. To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;
- b. To use its best efforts to cause their employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- c. To use its best efforts to cause their employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and
- d. That in connection with any testimony of Respondents to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondents:
 - i. Agree that any such notice or subpoena for Respondents' appearance and testimony may be served by regular mail on their attorney, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, attn: Stephen DiPrima, Esq.; and
 - ii. Agree that any such notice or subpoena for Respondents' appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

137. Compliance and Oversight Structure (BACAP and BACAP Distributors). BACAP and BACAP Distributors shall maintain a compliance and ethics oversight infrastructure having the following characteristics:

- a. BACAP and BACAP Distributors shall maintain a Code of Ethics Oversight Committee having responsibility for all matters relating to issues arising under the BACAP and BACAP Distributors Codes of Ethics. The Codes of Ethics Oversight Committee shall be comprised of senior executives

of BACAP's and BACAP Distributors' operating businesses. BACAP and BACAP Distributors shall hold at least quarterly meetings of the Codes of Ethics Oversight Committee to review violations of the Codes of Ethics, as well as to consider policy matters relating to the Codes of Ethics. BACAP and BACAP Distributors shall report on issues arising under the Codes of Ethics to the extent relating to fund business, including all violations thereof, to the Audit Committee of the Board of Trustees of the Nations Funds with such frequency as the Audit Committee of the Board of Trustees of the Nations Funds may instruct, and in any event at least quarterly, provided however that any material violation shall be reported promptly.

- b. BACAP and BACAP Distributors shall establish an Internal Compliance Controls Committee to be chaired by either BACAP's Chief Compliance Officer or BACAP Distributors' Chief Compliance Officer, which Committee shall have as its members senior executives of BACAP's and BACAP Distributors' operating businesses. Notice of all meetings of the Internal Compliance Controls Committee shall be given to the independent trustees of the Nations Funds mutual funds, who shall be invited to attend and participate in such meetings. The Internal Compliance Controls Committee shall review compliance issues throughout the business of BACAP and BACAP Distributors, endeavor to develop solutions to those issues as they may arise from time to time, and oversee implementation of those solutions. The Internal Compliance Controls Committee shall provide reports on internal compliance matters to the Audit Committee of the Board of Trustees of the Nations Funds mutual funds with such frequency as the independent trustees of such funds may instruct, and in any event at least quarterly. BACAP and BACAP Distributors shall also provide to the Board of Managers of BACAP and the Board of Managers of BACAP Distributors the same reports of the Code of Ethics Oversight Committee and the Internal Compliance Controls Committee that it provides to the Audit Committee of the Board of Trustees of the Nations Funds mutual funds.
- c. BACAP and BACAP Distributors shall establish and staff a full-time senior-level position whose responsibilities shall include compliance matters related to conflicts of interests. This officer will report directly to the Chief Compliance

Officer of BACAP and/or BACAP Distributors.

- d. BACAP and BACAP Distributors shall require that BACAP's Chief Compliance Officer or a member of his or her staff review compliance with the policies and procedures established to address compliance issues under the Investment Advisers Act and Investment Company Act and that any violations be reported to the Internal Compliance Controls Committee.
- e. BACAP and BACAP Distributors shall require the Chief Compliance Officer of BACAP to report to the independent trustees of the Nations Funds mutual funds any breach of fiduciary duty and/or the federal securities laws of which he or she becomes aware in the course of carrying out his or her duties, with such frequency as the independent trustees of the Nations Funds mutual funds may instruct, and in any event at least quarterly, provided however that any material breach (i.e., any breach that would be important, qualitatively or quantitatively, to a reasonable trustee) shall be reported promptly.
- f. BACAP and BACAP Distributors shall establish a corporate ombudsman to whom BACAP and BACAP Distributors employees may convey concerns about BACAP and/or BACAP Distributors business matters that they believe implicate matters of ethics or questionable practices. BACAP and BACAP Distributors shall establish procedures to investigate matters brought to the attention of the ombudsman, and these procedures shall be presented for review and approval by the independent trustees of the Nations Funds mutual funds. BACAP and BACAP Distributors shall also review matters to the extent relating to fund business brought to the attention of the ombudsman, along with any resolution of such matters, with the independent trustees of the Nations Funds mutual funds with such frequency as the independent trustees of such funds may instruct.

138. Compliance and Oversight Structure (BAS). BAS shall maintain a compliance and ethics oversight infrastructure having the following characteristics:

- a. BAS shall maintain a Code of Ethics Oversight Committee having responsibility for all matters relating to issues arising under the BAS Code of Ethics. The Code of Ethics Oversight Committee shall be comprised of senior executives

of BAS's operating businesses. BAS shall hold at least quarterly meetings of the Code of Ethics Oversight Committee to review violations of the Code of Ethics, as well as to consider policy matters relating to the Code of Ethics. BAS shall report promptly on material issues arising under the Code of Ethics, including all violations thereof, to the Board of Managers of BAS.

- b. BAS shall establish an Internal Compliance Controls Committee to be chaired by BAS's Chief Compliance Officer, which Committee shall have as its members senior executives of BAS's operating businesses. The Internal Compliance Controls Committee shall review compliance issues throughout the business of BAS, endeavor to develop solutions to those issues as they may arise from time to time, and oversee implementation of those solutions. The Internal Compliance Controls Committee shall provide reports on material internal compliance matters to the Board of Managers of BAS with such frequency as the Board of Managers of BAS may instruct, and in any event at least quarterly.
- c. BAS shall require the Chief Compliance Officer of BAS to report promptly to the Board of Managers of BAS any material violation of the federal securities laws of which he or she becomes aware in the course of carrying out his or her duties.
- d. BAS shall establish a corporate ombudsman to whom BAS employees may convey concerns about BAS business matters that they believe implicate matters of ethics or questionable practices. BAS shall establish procedures to investigate matters brought to the attention of the ombudsman, and these procedures shall be presented for review and approval by the Board of Managers of BAS.

139. Independent Distribution Consultant. Respondents shall retain, within 10 days of the date of entry of the Order, the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission and the independent trustees of the Nations Funds mutual funds. The Independent Distribution Consultant's compensation and expenses shall be borne exclusively by Respondents. Respondents shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to their files, books, records, and personnel as reasonably requested for the review.

- a. Respondents shall require that the Independent Distribution

Consultant develop a Distribution Plan for the distribution of the \$375 million in disgorgement and penalty, and any interest or earnings thereon, according to a methodology developed in consultation with Respondents and the independent trustees of the Nations Funds mutual funds and acceptable to the staff of the Commission.

- b. Respondents shall require that the Independent Distribution Consultant submit a Distribution Plan to Respondents and the staff of the Commission no more than 100 days after the date of entry of the Order.
- c. The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 130 days after the date of entry of the Order, Respondents or the staff of the Commission advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.
- d. With respect to any determination or calculation with which Respondents or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 160 days of the date of entry of the Order. In the event that Respondents and the staff of the Commission are unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding.
- e. Within 175 days of the date of entry of this Order, Respondents shall require that the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. § 201.1101] of the Commission's Rules Regarding Disgorgement and Fair Fund Plans. Following a Commission order approving a final plan of disgorgement, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules Regarding Disgorgement and Fair Fund Plans, Respondents shall require that the Independent Distribution Consultant, with Respondents, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.
- f. Respondents shall require that the Independent Distribution

Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondents shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under the Order not, without prior written consent of the independent Trustees of the Nations Funds mutual funds and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

140. Independent Compliance Consultant (BACAP and BACAP Distributors). BACAP and BACAP Distributors shall retain, within 30 days of the date of entry of the Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission and a majority of the independent trustees of the Nations Funds mutual funds. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by BACAP, BACAP Distributors or their non-investment company affiliates. BACAP and BACAP Distributors shall require the Independent Compliance Consultant to conduct a comprehensive review of BACAP's and BACAP Distributors' supervisory, compliance, and other policies and procedures designed to prevent and detect conflicts of interest, breaches of fiduciary duty, breaches of the Codes of Ethics and federal securities law violations by BACAP, BACAP Distributors and their employees. This review shall include, but shall not be limited to, a review of BACAP's and BACAP Distributors' market timing controls across all areas of its business, a review of the Nations Funds mutual funds' pricing practices that may make those funds vulnerable to market timing, a review of the Nations Funds mutual funds' utilization of short term trading fees and other controls for deterring excessive short term trading, a review of possible governance changes in the Nations Funds mutual fund boards to include committees organized by market sector or other criteria so as to improve compliance, and a review of BACAP's and BACAP Distributors' policies and procedures concerning conflicts of interest, including conflicts arising from advisory services to multiple clients. BACAP and BACAP Distributors shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to their files, books, records, and personnel as reasonably requested for the review.

- a. BACAP and BACAP Distributors shall require, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry of the Order, the

Independent Compliance Consultant to submit a Report to BACAP, BACAP Distributors, the Board of Trustees of the Nations Funds mutual funds, and the staff of the Commission. BACAP and BACAP Distributors shall require the Independent Compliance Consultant to address in the Report the issues described in paragraph 140 of these undertakings, and to include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of BACAP, BACAP Distributors and the Nations Funds mutual funds, and a procedure for implementing the recommended changes in or improvements to BACAP's and BACAP Distributors' policies and procedures.

- b. BACAP and BACAP Distributors shall adopt all recommendations with respect to BACAP and BACAP Distributors contained in the Report of the Independent Compliance Consultant; provided, however, that within 150 days after the date of entry of the Order, BACAP and BACAP Distributors shall in writing advise the Independent Compliance Consultant, the Board of Trustees of the Nations Funds mutual funds and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that BACAP and/or BACAP Distributors considers unnecessary or inappropriate, BACAP and/or BACAP Distributors need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.
- c. As to any recommendation with respect to BACAP's and BACAP Distributors' policies and procedures on which BACAP, BACAP Distributors and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 180 days of the date of entry of the Order. In the event BACAP, BACAP Distributors and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, BACAP and BACAP Distributors will abide by the determinations of the Independent Compliance Consultant.
- d. BACAP and BACAP Distributors: (i) shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of a majority

of the independent trustees of the Nations Funds mutual funds and the staff of the Commission; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the independent trustees of the Nations Funds mutual funds or the Commission.

- e. BACAP and BACAP Distributors shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with BACAP, BACAP Distributors, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. BACAP and BACAP Distributors shall require that any firm with which the Independent Compliance Consultant is affiliated in performance of his or her duties under the Order shall not, without prior written consent of the independent trustees of Nations Funds mutual funds and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BACAP, BACAP Distributors, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

141. Periodic Compliance Review (BACAP and BACAP Distributors).

Commencing in 2006, and at least once every other year thereafter, BACAP and BACAP Distributors shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act, of BACAP and/or BACAP Distributors. At the conclusion of the review, BACAP and BACAP Distributors shall require the third party to issue a report of its findings and recommendations concerning BACAP's and BACAP Distributors' supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Codes of Ethics and federal securities law violations by BACAP, BACAP Distributors and their employees in connection with their duties and activities on behalf of and related to the Nations Funds mutual funds. BACAP and BACAP Distributors shall promptly

deliver each such report to BACAP's Internal Compliance Controls Committee and to the Audit Committee of the Board of Trustees of each Nations Funds mutual fund.

142. Certification (BACAP and BACAP Distributors). No later than twenty-four months after the date of entry of the Order, the chief executive officer of BACAP and BACAP Distributors shall certify to the Commission in writing that BACAP and BACAP Distributors have fully adopted and complied in all material respects with the undertakings set forth in paragraphs 137, 139, 140, 141, 142 and 143, and with the recommendations of the Independent Compliance Consultant or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

143. Recordkeeping (BACAP and BACAP Distributors). BACAP and BACAP Distributors shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record, except electronic mail as set forth below, of BACAP's and BACAP Distributors' compliance with the undertakings set forth in paragraphs 137, 139, 140, 141, 142 and 143. BACAP and BACAP Distributors shall preserve for a period not less than three years from the end of the fiscal year last used, the first two years in an easily accessible place, any electronic mail record of BACAP's and BACAP Distributors' compliance with the undertakings set forth in paragraphs 137, 139, 140, 141, 142 and 143.

144. Independent Compliance Consultant (BAS). BAS shall retain, within 30 days of the date of entry of the Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by BAS or its non-investment company affiliates. BAS shall require the Independent Compliance Consultant to conduct a comprehensive review of BAS's supervisory, compliance, and other policies and procedures designed to prevent and detect conflicts of interest, breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by BAS and its employees related to the retail sale and retail brokerage order processing of mutual funds. This review, which relates to the retail sale and retail brokerage order processing of mutual funds, shall include, but shall not be limited to, a review of financial arrangements of BAS in connection with the accounts of any BAS customer through any banking subsidiary or affiliate of Bank of America, a review of credit arrangements between BAS and Bank of America or affiliated entities, a review of BAS's promotion or marketing of mutual funds advised by Bank of America or its subsidiaries to customers of Bank of America or its affiliates, and a review of payments or provisions of information by BAS to assist Bank of America to pay for referrals of any brokerage, investment banking, or other secondary business from Bank of America or any subsidiary or affiliate. BAS shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

- a. BAS shall require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry

of the Order, the Independent Compliance Consultant shall submit a Report to BAS and the staff of the Commission. BAS shall require the Independent Compliance Consultant to address in the Report the issues described in paragraph 144 of these undertakings, and to include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of BAS, and a procedure for implementing the recommended changes in or improvements to BAS's policies and procedures.

- b. BAS shall adopt all recommendations with respect to BAS contained in the Report of the Independent Compliance Consultant; provided, however, that within 150 days after the date of entry of the Order, BAS shall in writing advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that BAS considers unnecessary or inappropriate, BAS need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.
- c. As to any recommendation with respect to BAS's policies and procedures on which BAS and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 180 days of the date of entry of the Order. In the event BAS and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, BAS will abide by the determinations of the Independent Compliance Consultant.
- d. BAS: (i) shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of the staff of the Commission; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the

Commission.

- e. BAS shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with BAS or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Compliance Consultant is affiliated in performance of his or her duties under the Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BAS or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

145. Periodic Compliance Review (BAS). Commencing in 2006, and at least once every other year thereafter, BAS shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act, of BAS. At the conclusion of the review, BAS shall require the third party to issue a report of its findings and recommendations concerning BAS's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by BAS and its employees in connection with the retail sales and brokerage order processing of mutual funds. BAS shall promptly deliver each such report to BAS's Board of Managers.

146. Certification (BAS). No later than twenty-four months after the date of entry of the Order, the chief executive officer of BAS shall certify to the Commission in writing that BAS has fully adopted and complied in all material respects with the undertakings set forth in paragraphs 138, 139, 144, 145, 146 and 147, and with the recommendations of the Independent Compliance Consultant or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

147. Recordkeeping (BAS). BAS shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record, except electronic mail as set forth below, of BAS's compliance with the undertakings set forth in paragraphs 138, 139, 144, 145, 146 and 147. BAS shall preserve for a period not less than three years from the end of the fiscal year last used, the first two years in an easily accessible place, any electronic mail record of BAS's compliance with the undertakings set forth in paragraphs 138, 139, 144, 145, 146 and 147.

148. Obligations of Successor to BAS. In the event that responsibility for the retail sales and retail brokerage order processing of mutual funds shall be transferred from BAS to a successor affiliated entity (“Successor”), Successor shall comply with the undertakings set forth in paragraphs 138, 139, 144, 145, 146 and 147.

149. Deadlines. For good cause shown, the Commission’s staff may extend any of the procedural dates set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents Offers. Accordingly, it is hereby ORDERED, effectively immediately, that:

- A. Pursuant to Section 203(e) of the Advisers Act, BACAP is hereby censured.
- B. Pursuant to Section 203(e) of the Advisers Act and Section 15(b)(4) of the Exchange Act, BACAP Distributors is hereby censured.
- C. Pursuant to Section 15(b)(4) of the Exchange Act, BAS is hereby censured.
- D. Pursuant to Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, Respondent BACAP shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act, Sections 17(d), 20(a) and 34(b) of the Investment Company Act and Rules 17d-1 and 20a-1 thereunder.
- E. Pursuant to Section 8A of the Securities Act, Sections 21C of the Exchange Act, Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, Respondent BACAP Distributors shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder and Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, and from causing any violations and any future violations of Section 34(b) of the Investment Company Act and Sections 206(1) and 206(2) of the Advisers Act.
- F. Pursuant to Section 8A of the Securities Act, Sections 21C of the Exchange Act, Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, Respondent BAS shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 15(c) and 17(a) of the Exchange Act and Rules 10b-5, 15c1-2, 17a-3 and 17a-4 thereunder and

Rule 22c-1, as adopted under Section 22(c) of the Investment Company Act, and from causing any violations and any future violations of Section 34(b) of the Investment Company Act and Sections 206(1) and 206(2) of the Advisers Act.

- G. Disgorgement and Civil Money Penalties. BAS, BACAP, and BACAP Distributors shall, within 20 days of the entry of this Order, pay, on a joint and several basis, disgorgement in the total amount of \$250,000,000 (“Disgorgement”) and civil money penalties in the amount of \$125,000,000 (“Penalties”), for a total payment of \$375,000,000.
- a. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) wired, hand-delivered, or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22132; and (D) submitted under cover letter that identifies BACAP, BACAP Distributors, and BAS as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter, wire transfer instruction, money order, or check shall be sent to Mark K. Schonfeld, Regional Director, Securities and Exchange Commission, Division of Enforcement, Northeast Regional Office, 233 Broadway, New York, NY, 10279.
 - b. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in Section IV.G. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that they shall not, in any Related Investor Action, benefit from any offset or reduction of any investor’s claim by the amount of any Fair Fund distribution to such investor in this proceeding that is proportionately attributable to the civil penalty paid by Respondents (“Penalty Offset”). If the court in any Related Investor Action grants such an offset or reduction, Respondents agree that they shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed against Respondents in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on

substantially the same facts as alleged in the Order in this proceeding.

- H. Respondents shall comply with the undertakings set forth in paragraphs 137 through 147 above.
- I. Other Obligations and Requirements. Nothing in this Order shall relieve Respondents or any Nations Fund mutual fund of any other applicable legal obligation or requirement, including any rule adopted by the Commission subsequent to this Order.

By the Commission.

Jonathan G. Katz
Secretary